

In the Matter of Merchant Mariner's Document No. Z-294653-D3 and
all other Licenses and Documents

Issued to: CLYDE CAHILL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

941

CLYDE CAHILL

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 24 July 1956, an Examiner of the United States Coast Guard at Mobile, Alabama, suspended Appellant's Merchant Mariner's Document No. Z-294653-D3 upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as a fireman watertender on board the American SS ALCOA CLIPPER under authority of the document above described, on or about 22 July 1956, while said vessel was at sea, he assaulted and battered the Junior Engineer, Charles R. Willis, with a dangerous weapon: to wit, a wrench.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice and he entered a plea of "not guilty" to the charge and specification.

Thereupon, the Investigating Officer and Appellant's counsel made their opening statements. The Investigating Officer introduced in evidence the testimony of the Junior Engineer and the Master of the ALCOA CLIPPER.

In defense, Appellant offered in evidence his sworn testimony and that of two shipmates. Appellant testified that after the Junior Engineer spilled some oil, there was an exchange of words before the Junior Engineer lunged at Appellant and he struck the Junior Engineer.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-294653-D3,

and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of three months outright and six months on twenty-four months probation.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 22 July 1956, Appellant was serving as a fireman watertender on board the American SS ALCOA CLIPPER and acting under authority of his Merchant Mariner's Document No. Z-264653-D3 while the ship was at sea.

On this date, the Junior Engineer and Appellant were on the 0400 to 0800 watch. They were alone in the fireroom when the Junior Engineer spilled some oil on the floor plates and indicated that he expected Appellant to clean it up. Shortly thereafter, Appellant struck the Junior Engineer on the top of his head with a wrench. There had been no further provocation. The blow caused a cut on the Junior Engineer's head. The latter chased Appellant out of the engine room. Appellant reported the incident to the Master on the bridge. The Junior Engineer was not seriously injured and he was able to resume his watch after treatment by the ship's doctor.

Appellant's prior record consists of a suspension in 1945 for failure to turn to; an admonition in 1946 for illegal possession of ship's property; a suspension in 1947 for refusal to obey a lawful order and failure to join his ship.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the order is extremely harsh in view of the provocation and testimony of Appellant that he was attacked by the Junior Engineer. Also the injury suffered by the latter was a minor one. It is respectfully requested that the three months outright suspension be canceled.

APPEARANCES: Otto E. Simon, Esquire, at the hearing. Ross Diamond, Jr., Esquire, on appeal.

OPINION

In view of the Examiner's ultimate finding that Appellant assaulted and battered the Junior Engineer, it is apparent that the Examiner did not accept Appellant's version that he was attacked by

the Junior Engineer before hitting him on the head. The findings show that there was no provocation which justified Appellant's conduct.

The Examiner considered the facts that the Junior Engineer was not injured seriously and that Appellant had a good reputation of the ALCOA CLIPPER. Under the circumstances, it is my opinion that the order imposed by the Examiner was lenient rather than extremely harsh as Appellant contends. By his conduct, Appellant disrupted the orderly routine of the watch while the ship was at sea. Thus, he imperiled the safety of the ship as well as that of the Junior Engineer. Appellant's request that the outright suspension be removed from the order will not be granted.

ORDER

The order of the Examiner dated at Mobile, Alabama, on 24 July 1956 is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 12th day of December, 1956.